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CONGRESS OF THE UNITED STATES
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COMMITTEE ON APPROPRIATIONS
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CHAIRMAN

DEFENSE SUBCOMMITTEE
MILITARY CONSTRUCTION, VETERAN AFFAIRS,
AND RELATED AGENCIES SUBCOMMITTEE

April 10, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
US Small Business Administration
409 3rd St, SW
Washington, DC 20416

Dear Secretary Mnuchin and Administrator Carranza:

Thank you for all your work during these unprecedented times. I write to you both with several concerns I have been hearing about that indicate private equity firms are looking for loopholes in the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act in order to divert funds to themselves that were intended for our small businesses and employees most severely damaged by the COVID-19 pandemic.

This reported money-grab is completely unconscionable for three simple reasons. First, federal funds for the Small Business Administration's (SBA) Payroll Protection Program authorized by CARES are limited and in high demand. Every dollar that private equity firms divert for themselves is one less dollar for truly independent small businesses and their employees. Second, with \$2.5 trillion in unused investment capital at their disposal, private equity companies should dig into their own pockets – not the taxpayers' – to support the businesses that they generally buy at distress prices.

Third, an unjustified sweetheart deal for private equity could be counterproductive to the bipartisan goal to help those most in need. Private equity firms often engage in "strip and flip" schemes – raiding companies, saddling them with debt, firing employees and selling off their assets to turn a quick buck, leaving a trail of wreckage in their wake. A leading nonprofit coalition reported that ten of the fourteen largest retail bankruptcies since 2012 were companies owned by private equity. Another report shows that nine of the ten largest retail bankruptcies in 2017 were companies owned or backed by private-equity firms, and that a third of retail job losses in 2016 and 2017 can be pinned on private equity ownership. A third study suggests private equity is responsible for 1.3 million lost retail jobs. The Sears and Toys 'R' Us bankruptcies provide good illustrative examples.

Similar stories have occurred in the news, grocery, health care, real estate and many other industries. Amidst the current downturn, even as private equity firms sit on huge stockpiles of available cash, PE-owned portfolio companies are laying off workers – Busche Performance Group laid off 450 plant workers in Indiana, and Rawlings Sporting Goods sent 300 workers packing in Missouri, as just two examples. The PE firm CraftWorks just fired most of its 18,000 workers from popular restaurant chains like Logan's Roadhouse and Gordon Biersch after strip-mining them.

Working people always seem to be the losers with PE buyouts and studies have repeatedly shown the devastating job losses, wage cuts across multiple industries, and the overall worsening of inequality that ensue. This is something we are trying to stop, not encourage, with the CARES Act.

But federal bailout funds for private equity could encourage even more of this exploitative behavior. Reuters reports that “major private equity firms, which have built up big distressed debt funds in recent years, are ready to snap up assets on the cheap if the coronavirus outbreak causes deeper market disruptions, executives told an industry meeting this week.” In the words of a private equity executive, “[a] downturn would not be a bad thing.” A Goldman & Sachs associate told Vox that “corporate raiders and PE firms are sharpening their knives.”

For these reasons, I respectfully request you institute the following protections as the implementation process continues.

A. Payroll Protection Program

The CARES Act Payroll Protection Program contains essential provisions relating to loan forgiveness. Eligibility is reserved for legitimate small businesses (500 or fewer employees, and those firms that otherwise meet existing SBA guidelines). Numerous reports indicate that private equity is lobbying to change the “affiliate” rules so they can hijack up to \$10 million in federal funds for each and every portfolio company (or even “per location”) that they have bought or leveraged. These are funds that would otherwise be available for actual small businesses and their employees.

Private equity firms as a class should be subject to the same SBA affiliation rules as everyone else. There is simply no rationale for any sweetheart or backroom deals. If any exception to this principle is even contemplated, it should be limited to truly small business venture capital start-ups that need the funds to survive, provided that such exceptions involve companies with 500 or fewer employees, are limited to genuine start-ups (in business for less than five years), are consistent with SBA’s other small business definitions (e.g. total volume of business thresholds by industry) and observe strict limits on the use of federal funds for dividends and stock buybacks for at least two years after the loan is repaid or forgiven.

B. Private Equity’s Non-Investment Grade Bonds

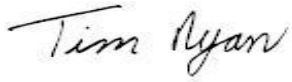
Private equity firms also have been notorious for buying companies backed by the assets of those companies and then loading them down with high-risk debt by issuing non-investment grade, junk bonds, rated below BBB grade. These junk bonds represent less than a tenth of the total estimated \$7 trillion U.S. bond market. They represented high risk long before the current crisis, and the high returns offered by those bonds priced in the risk.

This category of bonds is the least deserving of any federal government bailout. A federal bailout here would outrageously reward excessive risk-taking and privatize any gains while socializing the losses to taxpayers. This would be a gross perversion of Congressional intent of the CARES Act. The high risk of junk bonds issued prior to the advent of the COVID-19 crisis should be retained by those who freely chose to accept that risk. Accordingly, I ask you to take steps to ensure there will be no federal bailout for bonds that had junk status as of March 1, 2020.

In closing, I know that you face many competing challenges as you work to ensure that the federal government does its best to counter the impact of COVID-19 on our economy and our people. Large private equity firms should be denied the opportunity to strip the federal resources in CARES (or any subsequent legislation Congress passes) that are essential for the recovery of small American businesses, and their lobbyists should not be rewarded for winning loopholes by working the Beltway's back-channel levers.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Tim Ryan". The signature is written in a cursive, flowing style.

Tim Ryan
Member of Congress